STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 21, 2011

In the Matter of B. R. DAVIS, Minor.

No. 301677
Macomb Circuit Court
Family Division
LC No. 2010-000433-NA

Before: TALBOT, P.J., and HOEKSTRA and GLEICHER, JJ.

MEMORANDUM.

D. Davis challenges the order terminating his parental rights to the minor child based on his inability to provide proper care and custody[1] and the existence of a reasonable likelihood that the child would be harmed if returned to Davis' care.[2] We affirm.

In general, Davis claims that the trial court erred in finding that the evidence was sufficient to warrant the termination of his parental rights. Specifically, Davis contends the trial court erred in finding that he was incapable of providing proper care and custody for the child solely based on his incarceration. A statutory ground for termination must be proven by clear and convincing evidence.[3] Although Davis acknowledges that his parental rights were terminated under two separate statutory subsections[4], his argument addresses only termination under the provision pertaining to the inability of a parent to provide proper care and custody for their minor child. Where a respondent does not challenge a trial court's determination with regard to one or more of several statutory grounds, this Court may assume that the trial court did not clearly err in finding that the unchallenged grounds were proven by clear and convincing evidence.[5] Further, the failure of Davis to address an issue that must necessarily be reached to

[1] MCL 712A.19b(3)(g).

[2] MCL 712A.19b(3)(j).

[3] MCR 3.977(E)(3); *In re Archer*, 277 Mich App 71, 73; 744 NW2d 1 (2007).

[4] MCR 712A.19b(3)(g) and (j).

[5] See *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1999), overruled in part on other grounds by *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000).

reverse the trial court precludes appellate relief.[6] As a result, the failure of Davis to address the termination of his parental rights based on the trial court's determination of a reasonable likelihood of harm to the child if placed in his care can serve to preclude relief on appeal.[7]

Nonetheless, we find no clear err in the trial court's determination that Davis was incapable of providing proper care and custody for the minor child was established by clear and convincing evidence.[8] Davis actually concedes that his incarceration prevented him from providing proper care or custody. He argues only that the evidence did not support a finding that he would not be able to provide proper care and custody within a reasonable time. Contrary to Davis' assertions, the evidence showed that the child is very young with special needs as she has been diagnosed with hydrocephalus, a brain cyst and shunt that require regular and ongoing medical attention and monitoring. The minor child never resided with Davis and he did not provide her with any financial support. Davis will be in prison until 2018 and he had not made any arrangements for the child's care in his absence, did not provide a power of attorney to assure the child's ability to receive necessary medical care, and made no attempts to be in contact with his daughter.

Based on the unrebutted evidence, we find that the trial court did not clearly err in determining that Davis would be incapable of providing proper care and custody within a reasonable time given the child's age and documented medical needs. The length of Davis' prison sentence, coupled with his failure to offer any plan or efforts to assure the child's receipt of care in his absence or provide the child with any financial support distinguishes his circumstances from cases in which children are placed with a family member pending the imminent release of a respondent from prison with efforts successfully undertaken in anticipation of reunification with his or her child following release from an incarceration.[9]

Affirmed.

/s/ Michael J. Talbot
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher

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[6] *City of Riverview v Sibley Limestone,* 270 Mich App 627, 638; 716 NW2d 615 (2006).

[7] MCL 712A.19b(3)(j).

[8] MCL 712A.19b(3)(g).

[9] *In re Mason,* 486 Mich 142, 162-164; 782 NW2d 747 (2010).